

Guidance on Medical Care for EOHHS Clients and Patients during Reduction of Staff and Public Health Emergencies

This document was developed by the Massachusetts Department of Public Health.

These questions and answers are offered to provide general guidance. Agency regulations may authorize different procedures for vaccinating, treating, isolating or quarantining patients or residents depending upon the legal authority under which care or treatment is provided. It is suggested that agency counsel review these agency specific regulations and, following an analysis to ensure that these regulations meet statutory and constitutional requirements, this document should be amended to address circumstances where specific agency procedures will differ.

Question 1: Can an EOHHS agency (agency) mandate that a client or patient be vaccinated for influenza or be treated with anti-viral medication for influenza?

Answer: No, an agency cannot, in the absence of extreme emergency or specific legal authority, forcibly vaccinate or treat clients or patients against their will. It is recommended that agencies take the following steps in situations where clients or patients refuse to submit to vaccination or treatment:

(a) Circumstances Where No Public Health Emergency or State of Emergency Has Been Declared:

If the circumstances are such that the client's continued participation in the program or the patient's proximity to other patients poses a serious danger to others, a non-residential program or facility can refuse admission to the client and a residential program or inpatient facility may require voluntary isolation or quarantine of that client or patient as a condition of continued admission.

Should the patient/client continue his or her refusal in the face of a loss of services, it is advisable for the facility to contact the local public health authority or the Massachusetts Department of Public Health (MDPH) for instruction on the necessity of isolation or quarantine and for the issuance of an order to isolate or quarantine an individual or individual(s).

Such order may be verbal if the situation requires immediate action.

Following the isolation or quarantine based on an order by the public health authority, the individual should be provided notice that upon request the order will be reviewed by the public health authority, and if that review results in continued isolation or quarantine, the individual may request further review (judicial review of the order).

(b) Circumstances Where a Public Health Emergency or State of Emergency Has Been Declared:

Where a public health emergency or state of emergency has been declared, an order issued from the Commissioner of Public Health will address the measures which must be taken to protect the public health.

- (1) In situations where isolation or quarantine is not possible, and the emergency situation requires vaccination or treatment to protect public health, the agency should obtain a court order to vaccinate or treat a client/patient who refuses these measures and who poses a serious danger to others. (In circumstances where vaccination or treatment poses an increased risk of harm to the patient/resident due to any medical condition, it is advisable to consult with the local board of health or the MDPH.)
- (2) In cases where there is no time to obtain a court order, the agency should:
 - (a) Contact the local board of health and/or the MDPH to facilitate isolation or quarantine outside the facility;
 - (b) Vaccinate or treat the client/patient pursuant to an order of the Commissioner. (It is anticipated that an order to forcibly vaccinate or treat an individual would only be issued if this was the sole and exclusive measure which would protect the public's health.)

Question 2: Can an agency mandate that an incompetent client or patient be vaccinated for influenza or be treated with anti-viral medication for influenza?

Answer: Yes, with the consent of a guardian or health care agent (HCA), as follows:

If the determination is made that the patient/client lacks the ability to provide informed consent for vaccination or treatment, a HCA authorized pursuant to a properly executed health care proxy in accordance with G.L. c. 201D or court appointed guardian will need to be consulted. If there is no HCA or court appointed guardian, it will be necessary to secure the appointment of a guardian. The role of both the HCA and guardian with respect to health care decision making is to act in the best interest of the client/patient. This would include providing or withholding consent with respect to vaccination or treatment. In the event the HCA or guardian decides that no vaccination or treatment is warranted or if there is no guardian, and insufficient time to obtain the appointment of a guardian, see response to Question 1.

Question 3: Can an agency client or patient who refuses vaccination or treatment be isolated or quarantined?

Answer: Yes, assuming the failure to isolate (if the client/patient is contagious or ill) or quarantine (if the client/patient is potentially contagious) would constitute a serious danger of infection for others in the program/facility, this would be an appropriate course of action. This would be appropriate for clients/patients in 24/7 programs/facilities. See response to Question 1.

If clients/patients are not in a 24/7 situation and there is concern that the individual will infect others outside the program/facility, coordination with local and state public health authorities should occur. It may be necessary to initiate a proceeding for court mandated isolation or quarantine if voluntary isolation or quarantine is not possible.

Question 4: If a client or patient has a Rogers guardianship for antipsychotic medications, does the guardianship have to be amended to include influenza vaccination or treatment?

Answer: Often, if there is a Rogers guardianship for the administration of antipsychotic medication, the guardianship decree also grants the guardian the authority to make routine and usual decisions with respect to medical care, including vaccination and treatment with antiviral medication. If the guardianship decree does not grant this authority, the guardianship decree must be amended to include it. See response

to Question 2. If the guardian decides that no vaccination or treatment is warranted, see response to Question 1.

Question 5: Can a guardian for an agency client or patient give advance approval for vaccination or treatment based on a specific set of conditions/circumstances?

Answer: Yes, this would be permissible since the guardian is authorized to make decisions for the client/patient which would include an advance directive to care for the client/patient in a certain manner under specified circumstances. This would be a reasonable exercise of the guardian's authority and would be consistent with the planning undertaken by government and private sectors as well as the public in preparation for a possible influenza pandemic.

Question 6: What should providers do with respect to the requirements of the Medication Administration Program (MAP) in the event of a substantial reduction in staff?

Answer: In terms of advance planning, these programs should have a continuity of operations plan that includes training of supplemental staff, if possible; making sure orders for medications are clear, readable and in languages that staff at the facility can understand; and ensuring that instructions for each medication are included.

In a public health emergency the statutory requirements of G.L. c. 94C and the regulatory provisions for the Medication Administration Program found in 105 CMR 700.000 et seq. can be modified or waived pursuant to an order of the Commissioner.

(a) If providers must deviate from statutory or regulatory requirements, will EOHHS and/or its agencies indemnify them from potential liability?

Answer: No. State law does not permit indemnification of providers who provide services under contract with the Commonwealth. Note: State employees are covered under the Tort Claims Act.

(b) Would there be an altered standard of care for health care providers if circumstances were such that there were insufficient staff and other necessary resources to provide the customary standard of care to patients?

Answer: It should also be noted in this regard that during a public health emergency, the Commissioner would have the authority to waive or modify statutory and regulatory requirements relating to the provision of medical services, e.g. staffing and physical facility requirements.

November 2006